FILE COPY

Office - Supreme Court, U. S
FILED
FEB 9 1938
CHARLES ELMORE CROPLEY
CLERK

No. 439.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1937.

UNITED STATES OF AMERICA,

Appellant,

v.

PHILIP KLEIN, ESCHEATOR OF THE COMMONWEALTH OF PENNSYLVANIA.

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA EASTERN DISTRICT.

BRIEF FOR THE COMMONWEALTH OF PENNSYLVANIA.

ALBERT H. LADNER, JR.,
A. JERE CRESKOFF.

MICHAEL EDELMAN,
Of Counsel.

Dunlap Printing Co., 1315-29 Cherry Street

INDEX

	PAGE
QUESTIONS INVOLVED	1
SUMMARY OF ARGUMENT	2
ARGUMENT:	
I. Is the provision by the Pennsylvania Legislature for the escheat of moneys under the control of a Federal Court sitting in Pennsylvania a proper exercise of its legislative function?	5
II. Do the escheat Statutes of Pennsylvania constitute an invasion of the Federal sovereignty, or does the decree complained of interfere with the custody, possession or control of the Federal Court?	11
III. Were the proceedings in the State Court without due process?	20
DISCUSSION OF APPELLANT'S BRIEF	22
CONCLUSION	26
APPENDIX	27

CITATIONS

CASES	PAGE
Ableman v. Booth, 21 How. 506	16
Alton's Estate, 220 Pa. 258	21
American Loan & Trust Co. v. Grand Rivers Co., 159 Fed. 775	3, 6
Blackstone v. Miller, 188 U. S. 189	25
Blinn v. Nelson, 222 U. S. 1	22
Commonwealth ex rel. v. Reeder, 171 Pa. 505	6
Commonwealth v. Thomas' Admr., 140 Ky. 789	24
Commonwealth v. Von Zedwitz, 215 Ky. 413	7
Crane v. Reeder, 21 Mich. 24	14
Harris v. Dennie, 3 Pet. 292	22
Heidritter v. Elizabeth Oil-Cloth Co., 112 U. S. 294	13
Johnson, in re, 167 U. S. 120	22
Klein, etc., v. Brodbeck, etc. (Appendix)	9
Marshall v. New York, 254 U. S. 380	17
Martin v. Hunter's Lessee, 1 Wheat. 304	16
Matter of Escheat, 322 Pa. 481	18
McCulloch v. State of Maryland, 4 Wheat. 316,	13, 15, 16
McKay v. Kalyton, 204 U. S. 458	22
Melrose Avenue, in re, 234 N. Y. 48	24
Moran v. Sturges, 154 U. S. 256	19
Orinoco Iron Co. v. Metzel, 230 Fed. 40	10
Palmer v. Texas, 212 U. S. 118	19, 23
Penn General Casualty v. Pa. ex rel. Schnader, 294 U. S. 189	3, 17, 19
Penna. v. Williams, 294 U. S. 176	19
Security Savings Bank v. State of California, 263 U. S. 282	4, 20
Tarble's Case, 13 Wall. 397	22
Terry v. Anderson, 95 U. S. 628	21
Tranter v. Allegheny County Authority, 316 Pa. 65	6

PAGE

Tyler v. Court of Registration, 175 Mass. 71 21
United States v. Bank of N. Y. & Trust Co., 296 U. S. 463 20
Wabash R. R. Co. v. Adelbert College, 208 U. S. 609 23
Wheeler v. Smith, 9 Howard 55 .....2, 14
White v. Mechanics Securities Corporation, 269 U. S. 283 .....23, 24
Wyman v. Halstead, 109 U. S. 654 10

STATUTES: PAGE

Pa. Act of Assembly May 2, 1889, as amended by Act of June 28, 1935, P. L. 475; 27 Purdon's Pennsylvania Statutes 334, Sec. 2 5
Pa. Act of Assembly May 2, 1889, P. L. 66, as amended by Act of June 28, 1935, P. L. 475; 27 Purdon's Pennsylvania Statutes 41, Sec. 5. 5
R. S. Sec. 995; May 29, 1920, C. 214, Sec. 1, 41 Stat. 654, 28 U. S. C. A. 851 8
R. S. 996, Mar. 3, 1911, C. 224, 36 Stat. 1083, 28 U. S. C. A. 852 8
Act of April 21, 1921, P. L. 223, Sec. 5, 27 Purdon's Pennsylvania Statutes 282 11
Act of May 20, 1921, P. L. 946, Sec. 1, 27 Purdon's Pennsylvania Statutes 91 21

MISCELLANEOUS:

A. and E. Encyclopedia of Law, Title "Escheat," Section 3 B, note 3 2

QUESTIONS INVOLVED

I. Is the provision by the Pennsylvania Legislature for the escheat of moneys under the control of a Federal Court sitting in Pennsylvania a proper exercise of its legislative function?

II. Do the escheat statutes of Pennsylvania constitute an invasion of the Federal sovereignty, or does the decree complained of interfere with the custody, possession or control of the Federal Court?

III. Were the proceedings in the State Court without due process?

SUMMARY OF ARGUMENT

1. The Commonwealth of Pennsylvania has the power of escheat, as does every other State in the Union. It is a prerogative of sovereignty which vested in the Crown prior to the Revolution and when the American Colonies achieved their independence, this prerogative vested in the people of the States. The power was not delegated to the United States by the Federal Constitution and therefore the power still subsists in the people of the States independent of constitutions or statutes. It is a power which antedates constitutions and statutes. As said in the American & English Encyclopedia of Law, title "Escheat," Section 3b, Note 3:

> "The principle of escheat cannot be said to rest upon statute, but rather is a principle coeval with the existence of society and existed before statute."
>
> WHEELER v. SMITH, 9 How. 55, 78.

The power of escheat applies to property of any description within the borders of the State, and applies equally to property in the hands of individuals and to property in the custody or control of a Federal Court located within the borders of the State.

The fund in dispute arises from a debt payable by a Pennsylvania corporation, which fund was deposited in court pursuant to a decree in an equity proceeding. The fund is still under the control of the Federal Court for the Eastern District of Pennsylvania pursuant to the Act of Congress, for the purpose for which the money was deposited. It is not contended by the appellant that the Federal Government claims the fund, nor that the Federal Government can escheat it.

2. It is conceded that the State cannot take possession of property in the custody or under the control of the Federal Court, but that fact need not prevent the judicial

determination by the State of the succession to unclaimed property under the control of a Federal Court located within its borders.

Within the States respectively it is the State which exclusively is parens patriæ of ownerless property and this result cannot be affected by the fact that the property might happen to be in the registry of a Federal Court. Though in the registry it is nevertheless a part of the general property in the State. The State succeeds to such ownerless property and has the right through its escheator to apply therefor to the Federal Court.

See AMERICAN LOAN & TRUST CO. v. GRAND RIVERS COMPANY, 159 Federal 775, 780.

The decree complained of is not an invasion of the jurisdiction of the Federal Court. It merely declares and establishes the title to the fund, but makes no provision for the enforcement of the decree. On the contrary, the Supreme Court of Pennsylvania recognized that as to the disposition of the fund the Federal Court has exclusive jurisdiction and therefore the decree merely gives the escheator authority to apply to the district court for an order of payment. Such authority given by a State Court to a State official to make application to a Federal Court for an order by the latter court is not a novel procedure and has been recognized quite recently by the Supreme Court of the United States.

See PENN GENERAL CASUALTY v. PENNSYLVANIA EX REL SCHNADER, 294 U. S. 189.

The appellee stresses the fact that the decree complained of has given to the Commonwealth of Pennsylvania nothing more than the authority to make application to the United States District Court for the order to which the Commonwealth of Pennsylvania asserts it is entitled under the relevant Act of Congress.

When the State of Pennsylvania will make such application to the Federal District Court it will have to prove its title as would any other litigant before that Court.

3. The decree entered does not violate the Fourteenth Amendment to the Federal Constitution. Service by publication is due process when it is the only service possible under the circumstances of the case.

SECURITY SAVINGS BANK v. STATE OF CALIFORNIA, 263 U. S. 282.

ARGUMENT

I

IS THE PROVISION BY THE PENNSYLVANIA LEGISLATURE FOR THE ESCHEAT OF MONEYS UNDER THE CONTROL OF A FEDERAL COURT SITTING IN PENNSYLVANIA A PROPER EXERCISE OF ITS LEGISLATIVE FUNCTION?

The Act of General Assembly of the Commonwealth of Pennsylvania approved May 2, 1889, P. L. 66, as amended by the Act of June 28, 1935, P. L. 475, 27 P. S. 334, provides:

> "Section 2. That whensoever any money, estate or effects shall have been, or shall hereafter be paid into, or deposited in the custody or be under the control of any court of this Commonwealth, or of any court of the United States in and for any district within this Commonwealth, or shall be in the custody of any depository, registry, or of any receiver, clerk or other officer of any of said courts, and the rightful owner or owners thereof shall have been unknown for the space of seven years, the same shall escheat to the Commonwealth, subject to all legal demands on the same."

The Act of May 2, 1889, P. L. 66, as amended by the Act of June 28, 1935, P. L. 475, 27 P. S. 41, provides:

> "Section 5. * * * Whenever an escheat has occurred, or shall occur of any money or property deposited in the custody of, or under the control of, any court of the United States in and for any district within this Commonwealth, or in the custody of any depository, clerk or other officer of such court, the court of common pleas of the county in which such court of the United States sits, shall have jurisdiction to ascertain if an escheat has occurred, and to enter a judgment or decree of escheat in favor of the Commonwealth."

These enactments are an exercise of the power of the legislature, which has long been recognized as absolute, except as limited by the Constitution of the United States and the Constitution of Pennsylvania. The principle is clearly stated in COMMONWEALTH *ex rel.* v. REEDER, 171 Pa. 505, 513, as follows:

> "Whatever the people have not, by their constitution, restrained themselves from doing, they, through their representatives in the legislature, may do. This latter body represents their will just as completely as a constitutional convention in all matters left open by the written constitution. Certain grants of power, very specifically set forth, were made by the states to the United States, and these cannot be revoked or disregarded by state legislation; then come the specific restraints imposed by our constitution upon our legislature; these must be respected; but in that wide domain not included in either of these boundaries the right of the people through the legislature to enact such laws as they choose, is absolute."

This proposition has been reaffirmed many times, most recently in TRANTER v. ALLEGHENY COUNTY AUTHORITY, 316 Pa. 65, 75.

There is no provision in the Constitution of Pennsylvania or the Constitution of the United States which forbids the enactments above quoted. The appellant has not pointed to any clause of either constitution, but has contented itself with the general statement that the statutes involved are void.

The mere fact that the property in question has been in the custody or control of the Federal Court does not affect the Commonwealth's right to escheat. The law on this point is well expressed in AMERICAN LOAN & TRUST COMPANY v. GRAND RIVERS CO. (C. C. KENTUCKY, 1908) 159 Federal 775, 780, as follows:

> "The National Government is not in any case the parens patriæ to which ownerless property of any

sort in any state of the Union passes. We think that within the states respectively it is the state which exclusively is parens patriæ, and this result cannot be affected by the fact that the property might happen to be in the registry of a federal court. Though in the registry it is nevertheless a part of the general property in the state. The state might with more plausibility be held to succeed to the title of such property, and to have the right through its escheator to apply to the court for it if any government is entitled to do so."

The same principle is recognized in COMM. v. VON ZEDWITZ, 215 Ky. 413. That case arose out of the "Trading with the Enemy Act," 12 U. S. C. 3115½ f, which provided for the delivery to the Alien Property Custodian of all money owing or belonging to, or held for, an enemy, and for the deposit of such moneys in the Treasury of the United States; that any person not an enemy claiming an interest in any such money held by the Alien Property Custodian or by the Treasury might file a claim with the Custodian, and the President might order the payment of the fund to the claimant; or the claimant might file his claim in the District Court of the United States for the District in which the claimant resided, and if his title was established, the court should order the payment to the claimant of the money held by the Custodian or the Treasury of the United States. Certain real estate in Kentucky was seized by the Custodian. The question was whether Kentucky's right of escheat was lost. The court declared it was not, saying (422):

"The act took away from the Commonwealth of Kentucky no right it had of escheating the lands in question * * *."

That the right of escheat of property is not lost by the state merely because such property has been taken into the custody of the Federal Court of a Federal agency, is perhaps more readily understood in the case of real estate,

but the principle is equally applicable to personal property thus taken into the custody of the Federal Court.

A proper understanding of the purpose and scope of the Pennsylvania Acts of Assembly may be derived from an examination of the Act of Congress, under the provisions of which these moneys were paid into the Registry of the United States Court. That act, R. S. Section 995; May 29, 1920, C 214 Section 1, 41 Stat. 654, 28 U. S. C. A. 851, reads as follows:

> "All moneys paid into any court of the United States or received by officers thereof in any cause pending or adjudicated in such Court shall be forthwith deposited with the Treasurer or a designated depositary of the United States, in the name and to the credit of such court."

R. S. Section 996, Act Mar. 3, 1911, c. 224; 36 Stat. 1083, 28 U. S. C. A. 852, reads:

> "In every case in which the right to withdraw money so deposited has been adjudicated, or is not in dispute, and such money has remained so deposited for at least five years unclaimed by the person entitled thereto, it shall be the duty of the Judge or Judges of the said court, or its successor, to cause such money to be deposited in the Treasury of the United States in the name and to the credit of the United States. Any person or persons, or any corporation or company entitled to such money may, on petition to the court from which the money was received, or its successor, and upon notice to the United States Attorney, and full proof of right thereto, obtain an order of court directing the payment of such money to the claimant."

The purpose of the Pennsylvania Acts of Assembly is the establishment of the Commonwealth's title to such moneys, and the qualifying of the Commonwealth as a "person entitled" within the meaning of the Federal Act. No right or title of the United States is involved.

Reference to the unreported opinion filed by the Honorable Oliver B. Dickinson, Judge of the Federal Court, in another part of these very proceedings, is pertinent. Judge Dickinson said (Appendix, post, page 27):

> "These moneys are in the hands of this court, or still, as to distribution, under its control. If any one turned up as a claimant owner, we could award the moneys to him. 'Any one' would include Pennsylvania. Any claimant, however, would be required to show title before he could receive an award. This likewise would include Pennsylvania * * *.
>
> "The Act of Congress which makes these moneys subject to the award of this Court does so only in favor of 'any person or persons, corporation or company' who can lay successful claim of ownership thereto. Assuming arguendo the State to be within this Act, it is able as yet to show no title to these moneys. Under the facts it may or may not be able to secure a judgment of escheat, but it has not done so * * *.
>
> "Our powers are those conferred by Congress, and Congress has restricted us to awarding the fund to the one who has title to it. Congress has passed no general escheat Statute. The State has no title and no title by escheat can be acquired otherwise than by a compliance with those (Pa.) Statutes. When the Petitioner is able to show title to these moneys it will then be our duty to pass judgment upon the title set up."

The very wording of the act shows that the court retains control of the money after it is deposited in the Treasury of the United States. Judge Dickinson, of the Federal Court, has left no doubt as to this fact. He says in his opinion (Appendix, post, page 27):

> "These moneys are in the hands of this court, or still, as to distribution, under its control."

The wording of the Pennsylvania Act of Assembly paraphrases that of Judge Dickinson, and was clearly intended to comprehend the present situation.

The moneys here involved are actually within the confines of Pennsylvania, although transferred by a bookkeeping entry from the registry of the Federal Court to the United States Treasury. The moneys are still under the control of the Federal Court in Pennsylvania, and for the purpose of the present proceeding, may be regarded as still within this State. This principle is recognized in WYMAN v. HALSTEAD, 109 U. S. 654, 658, which states:

> "The United States, in their sovereign capacity, having no domicile in any one part of the Union, rather than in any other, do not, by establishing at the national capital a treasury for the transaction of the principal business of the financial department of the government, confine their presence or their powers to this spot."

And, as is said in ORINOCO IRON CO. v. METZEL, 230 Fed. 40, 45 (6th Cir.),

> "The question is whether the fact that the fund was held in the Treasury of the United States alters the rule. No question of the right of the United States to the fund is involved. The government makes no claim to it in whole or in part. The fact that the seat of government is in the District of Columbia and that the general treasury is there situated, do not necessarily affect the issue, for the United States, in their sovereign capacity, have no particular place of domicile, but possess, in contemplation of law, an ubiquity throughout the Union."

It is not disputed that the persons entitled to the moneys involved have been unknown for more than seven years. The conditions specified in the statute being shown to exist, it was the duty of the Court of Common Pleas to enter the decree or judgment of escheat in favor of the Commonwealth. Armed with such decree, the Commonwealth is now in position to apply to the Federal Court for an order directing the Treasury of the United States to pay the money to the Commonwealth. Upon such appli-

cation, the Federal Court may then determine whether or not the Commonwealth is a "person entitled" within the meaning of the Federal Act.

The United States cannot be harmed in any way by such a procedure, because it can raise the issue of the status of the Commonwealth as a "person entitled" when that status is thus asserted in the Federal Court. There is no interference, in such a procedure, with the powers of the Federal Court, and no assertion of any right in the State Court which impinges upon the powers of the Federal Court.

It must be remembered that the Legislature of Pennsylvania has made a studied effort to bring before the Federal Court the question as to the right to these unclaimed moneys. The Act of April 21, 1921, P. L. 223, Sec. 5, provided for the escheat of such moneys, and under that act, the Commonwealth filed its petition in the Federal Court. The petition was dismissed, without prejudice, not on the merits, but purely because of Judge Dickinson's view that the Federal Court lacked jurisdiction to enter a decree of escheat. The Act of 1935 was an effort to give the Federal Court an opportunity of deciding, on the merits, the title to the unclaimed moneys. Unless the purpose of the Legislature is carried out, the question of the right to these moneys, to which the United States asserts no right, will ever be undetermined.

II

DO THE ESCHEAT STATUTES OF PENNSYLVANIA CONSTITUTE AN INVASION OF THE FEDERAL SOVEREIGNTY, OR DOES THE DECREE COMPLAINED OF INTERFERE WITH THE CUSTODY, POSSESSION OR CONTROL OF THE FEDERAL COURT?

The appellant has erroneously conceived the Pennsylvania statute to be an effort to take the money deposited in the registry of the United States District Court, with-

out the sanction of that court, and thus to interfere with that court. An examination of the act shows a careful avoidance of any possible inference that such interference is contemplated. The decree from which this appeal is taken is merely a declaration that under the laws of the Commonwealth of Pennsylvania an escheat has occurred. No order directing the payment of the money to the Commonwealth is provided for, and the escheator is merely directed to make application to the Federal Court for payment under the relevant Act of Congress.

The State of Pennsylvania has not attempted by the Pennsylvania Acts of Assembly to interfere with, or to control or direct, the actions of the United States District Court, and the objection raised as to the validity of the statutes must, therefore, fall.

Whether the United States District Court will recognize such decree of escheat as constituting the Commonwealth of Pennsylvania a "person entitled" under the Federal Act, is a question which must be left entirely to the determination of the Federal Court under the Federal Act.

The present proceeding was instituted for the purpose of completing what the Federal Court has declared is a step preliminary to the order of the Federal Court directing the United States Treasury to pay the money over to the Commonwealth, that step being the establishment of the Commonwealth's title, and the qualifying of the Commonwealth as a "person entitled" within the meaning of the Federal Act.

It was not intended by the establishment of the dual system of government in the United States that any person should be deprived of his rights by any technical differentiation between the powers of the Federal Courts and of the State Courts. There is no doubt that if one forum could consider the rights of all parties involved, that forum could properly determine the right of the Commonwealth to the escheat of the moneys now under the control of the Federal Court. By an accident of governmental

policy, there has been a separation of judicial control into Federal and State Courts. The original proceeding out of which these moneys arose, could well have been taken in the State Court, but by reason of the law providing that where there is diversity of citizenship, a proceeding may be brought in a Federal Court, the proceeding was there instituted. It is inconceivable that it was ever intended by the framers of our Federal Constitution that the right to take the proceedings into a Federal Court should result in the deprivation of any person, and especially of a State, of any rights to which it would have been entitled had the proceedings been in the State Court. This was recognized in McCULLOCH v. STATE OF MARYLAND, 4 Wheat. 316, in which the court, in deciding against the right of the State of Maryland to tax the operation of national banks, pointed out that a State was not deprived by such decision of any resources that it originally possessed. The court said, page 436:

> "This opinion does not deprive the States of any resources which they originally possessed. It does not extend to a tax paid by the real property of the bank, in common with the other real property within the State, nor to a tax imposed on the interest which the citizens of Maryland may hold in this institution, in common with other property of the same description throughout the State."

The care with which Federal Courts have refrained from interfering with courts of concurrent jurisdiction in the State is well illustrated by the case of HEIDRITTER v. ELIZABETH OIL-CLOTH COMPANY, 112 U. S. 294, which involved a dispute between the purchaser of property arising from a mechanic's lien action in the State of New Jersey, as against the purchaser from the United States Marshal who had seized the property for a violation of a Federal Act. The court said:

> "We refrain from pronouncing the proceedings in the State Court of New Jersey invalid, so far as they

> do not affect the legal title of the purchaser at the Marshal's sale to the premises in controversy. We decide * * * not that they are invalid for the purpose of declaring and establishing the lien, but that they are not good for the purpose of enforcing it, as was attempted by a sale and conveyance of the premises in controversy."

The right of escheat has not been delegated by the States.

The Court said in WHEELER v. SMITH, 9 How. 55:

> "When this country achieved its independence, the prerogatives of the crown devolved upon the people of the states * * * and this power still remains with them, except so far as they have delegated a portion of it to the Federal government."

And as is said in CRANE v. REEDER, 21 Mich. 24, 76:

> "There has never been an instance of escheat claimed to have accrued to the United States since they came into existence."

The appellant would deprive the Commonwealth of its day in court, which neither the people of Pennsylvania nor those of the other States, when agreeing to the Constitution of the United States, could ever have contemplated should be lost. On the other hand, if the position of the Commonwealth is taken by this Court, there is no loss of any one's rights by reason of the fortuitous initiation of the proceedings against the Pennsylvania Canal Company, a Pennsylvania corporation, in the Federal Court, rather than in the State Court.

The appellant cites a number of cases in support of the proposition that a statute amounting to an invasion of the sovereignty of the United States is unconstitutional, and that where a court of competent jurisdiction has taken possession of property, such property is withdrawn from the jurisdiction of other courts, and that no other court has the right to interfere with its custody or possession.

In the cases cited, there was an invasion of the Federal sovereignty, or an interference by one court with the jurisdiction of another.

There is not, however, in the present case, any invasion of the sovereignty of the United States, nor any interference with the jurisdiction of the Federal Court. To the contrary, there is, in recognition of the sovereignty of the United States, a proceeding in the State Court preliminary to submission by the Commonwealth of its claim to the Federal Court.

The assertion by the Commonwealth of one of its powers of sovereignty, that of escheat, does not constitute an invasion of the sovereignty of the United States, because this power is one which belongs to the State and not to the United States. As said in McCULLOCH v. STATE OF MARYLAND, 4 Wheat. 316, 410:

> "In America, the powers of sovereignty are divided between the government of the United States and those of the States. They are each sovereign, with respect to the objects committed to it, and neither sovereign with respect to the objects committed to the other."

There is no conflict here between the two sovereignties. One, the State, has the power of escheat; the other, the United States, does not have this power. The statutory declaration by the Pennsylvania Legislature of the conditions under which the escheat shall be considered to have occurred is not an invasion of the Federal Sovereignty, nor is the provision of the State law that the State Court shall determine whether those facts exist in a particular case an invasion.

The grant by Congress to the Federal Courts, of jurisdiction in cases where there is diversity of citizenship, was an execution of the power granted to it by the Constitution to constitute tribunals inferior to the Supreme Court. It was not intended by such grant of jurisdiction to de-

prive any State of any of its powers, and were it to do so, such grant itself would be unconstitutional. As said in McCulloch v. State of Maryland, *supra*, at page 423:

> "Should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not entrusted to the government, it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act is not the law of the land."

In Martin v. Hunter's Lessee, 1 Wheat. 304, cited by the appellant, the court said (page 347):

> "The constitution has presumed (whether rightly or wrongly we do not inquire) that state attachments, state jealousies, and state interests, might sometimes obstruct, or control, or be supposed to obstruct or control, the regular administration of justice. Hence, in controversies between states; between citizens of different states * * * it enables the parties, under the authority of Congress, to have the controversies heard, tried and determined before the national tribunals. No other reason than that which has been stated can be assigned, why some, at least, of those cases, should not have been left to the cognizance of state courts."

It must be noted that the court stated that what was given under the Act of Congress, was the authority "to have the controversies heard, tried and determined before the national tribunals." No rights are created, nor are any taken away.

This is made clear in Ableman v. Booth, 21 How. 506, in its discussion of the Constitution, as to the different language employed by the Constitution when conferring supremacy upon the laws of the United States, and jurisdiction upon its courts. The court said (page 519):

> "In the first case, it provides that 'this Constitution, and the laws of the United States, which shall be made in pursuance thereof, shall be the supreme law

> of the land.' * * * And in conferring judicial power upon the Federal government, it declared that the jurisdiction of its courts shall extend to all cases arising under 'this constitution' and the laws of the United States—leaving out the words of restriction contained in the grant of legislative power which we have above noticed. The judicial power covers every legislative act of Congress, whether it be made within the limits of its delegated powers, or be an assumption of power beyond the grants in the Constitution."

It is to be seen, therefore, that the fact that the Federal Court has jurisdiction of a cause does not carry with it a denial to a State of a power which it would have had if the Federal Court had not had jurisdiction. If the State Legislature, in exercising that power, requires that one of its courts determine first the existence of the facts upon which the exercise of the power depends, the determination by such State Courts is not an interference with the Federal Court.

The power thus existing in a State, and the facts upon which the exercise of this power having been determined by the State Court, it may be necessary in order for the State to procure the benefit or to bring about the fruition of the exercise of the power, to make application to a Federal Court to recognize the power, and to accord to the State the right to which this power entitled it. Such an application under the authority of the State Court is seen in the recent case of PENN GENERAL CASUALTY v. PENNSYLVANIA *ex rel.* SCHNADER, *supra*.

The Supreme Court of the United States has recognized the prerogative right of a State based upon its sovereign character in relation to assets in the control of a Federal Court. In MARSHALL v. NEW YORK, 254 U. S. 380, the court considered the right of a State to priority out of a debtor's property for debts due to the State. Justice Brandeis said, page 384:

"It (New York) asks merely to have its prerogative right enforced against property on which there is no prior lien and upon which it is impossible to levy because the property has been taken out of the hands of the debtor and placed in the custody of the court for purposes of protection and distribution."

Page 385:

"The priority of the state extends to all property of the debtor within its borders, whether the debtor be a resident or non-resident, and whether the property be in his possession or in *custodia legis*. A priority is therefore enforceable against the property in the hands of the receiver appointed by the federal court. For a receiver appointed by a federal court takes property subject to all liens, priorities or privileges existing or accruing under the laws of the state. * * * Since the prerogative right of the state could not be enforced by levy and seizure, an application to the court for payment of the debt due was the appropriate remedy."

Page 386:

"The fact that a right rests on the common law and independently of any statute does not, of course, affect the right of enforcement in the federal court."

It must be borne in mind that the proceedings in the State Court do not seek the possession of the property. As said by the Supreme Court of Pennsylvania in the matter of escheat, 322 Pa. 481:

"It may be conceded that the State cannot take possession of property in the custody of the federal government, but that fact need not prevent the judicial determination by the State of the succession to unclaimed property within its borders. The argument made for the Commonwealth concedes that the State Court can make no order on the Federal Treasury, or any other representative of the federal government, requiring the delivery of the property to the escheator; but the contention is that as the District Court, in the

proceeding brought by the escheator and referred to above, held that the Court lacked power to declare an escheat and dismissed his petition without prejudice, this proceeding in the State Court was necessarily instituted to determine the fact of escheat, and, the fact being found, to enable the Commonwealth then to present its claim to the District Court in control of the fund pursuant to the Act of Congress."

The authority given by a State Court to a State official to make application to a Federal Court for an order by the latter court is not an unusual or novel procedure, and a very recent sanction of such authority and recognition thereof by the United States Supreme Court is seen in the case of PENN GENERAL CASUALTY v. PENNSYLVANIA *ex rel.* SCHNADER, 294 U. S. 189. The court there stated (page 198):

"While it is often said, of two courts having concurrent jurisdiction in rem, that the one first taking possession acquires exclusive jurisdiction, it is exclusive only so far as its exercise is necessary for the proper control and disposition of the property. The jurisdiction does not extend beyond the purpose for which it is allowed, to enable the Court to exercise it appropriately and to avoid unseemly conflicts. The other Court does not thereby lose its authority to make orders which do not conflict with the authority of the Court having jurisdiction over the control and disposition of the property.

"The confirmation by the Court of Common Pleas of the right of the Insurance Commissioner to liquidate the Company did not infringe the authority of the District Court to make appropriate disposition of the property. But it did confer on the Commissioner the requisite authority to ask the District Court to relinquish its jurisdiction in favor of the State administration."

See also PENNA. v. WILLIAMS, 294 U. S. 176;
MORAN v. STURGES, 154 U. S. 256;
PALMER v. TEXAS, 212 U. S. 118.

The avoidance of unseemly conflict between various courts has been a matter of concern and treatment by the United States Supreme Court and is expressed by the Chief Justice of the United States Supreme Court in the case of UNITED STATES v. BANK OF NEW YORK AND TRUST COMPANY, 296 U. S. 463, as follows:

> "This principle is applied in the discharge of the long recognized duty of this court to 'give effect to such 'methods of procedure as shall serve to conciliate the distinct and independent tribunals of the States and of the Union, so that they may co-operate as harmonious members of a judicial system co-extensive with the United States.' Taylor v. Carryl, 20 How. 583, 595."

Too much stress cannot be laid upon the fact that the decree entered by the court below in this case has given the Commonwealth of Pennsylvania nothing save the bare right to make application to the United States District Court for the order to which the Commonwealth asserts it is entitled under the Act of Congress.

III

WERE THE PROCEEDINGS IN THE STATE COURT WITHOUT DUE PROCESS?

The unknown owners of the moneys were notified by publication of the proceedings in escheat. That notice, under the circumstances of the case, was sufficient service. In SECURITY SAVINGS BANK v. STATE OF CALIFORNIA, 263 U. S. 282, cited by the appellant, Justice Brandeis said:

> "The legislature evidently assumed that it would be impossible to serve such depositors personally. The Supreme Court of the State held that the legislature was warranted in this assumption. The owners of the deposits were therefore treated like persons unknown. We can not say that the view entertained by the legislature and the State courts was so unreasonable as to constitute a denial of due process."

If the decree of the State Court is recognized by the United States District Court upon the application of the escheator, and the moneys are ordered to be paid to the Commonwealth, the presently unknown owners, should they later appear, will have a further period of three years from the date of the decree of escheat to traverse the finding of escheat and to receive back again from the Commonwealth the moneys paid to the Commonwealth. Act of May 20, 1921, P. L. 946, Sec. 1, 27 P. S. 91. The limitation of time within which their claims must be presented is not a deprivation of a right. As said in ALTON'S ESTATE, 220 Pa. 258, arising out of escheat proceedings,

> "Limitations of actions, either by prescription or by statute, are older than any of our constitutions or common law. * * * While recognizing the right and furnishing a remedy for its enforcement, the legislature restricts and limits the remedy by providing that it shall be pursued within a reasonable time. * * * The power of the legislature to furnish the remedy includes the power to impose reasonable limitations on its enforcement."

In TERRY v. ANDERSON, 95 U. S. 628, the court said:

> "Statutes of limitation affecting existing rights are not unconstitutional, if a reasonable time is given for the commencement of an action before the bar takes effect. * * *"

In TYLER v. COURT OF REGISTRATION, 175 Mass. 71, Justice Holmes said:

> "Prescription or a statute of limitations may give a title good against the world and destroy all manner of outstanding claims without any notice of judicial proceeding at all. Time and the chance which it gives the owner to find out that he is in danger of losing rights are due process of law in that case."

The Supreme Court of the United States in BLINN v. NELSON, 222 U. S. 1, said:

> "Now and then an extraordinary case may turn up, but constitutional law, like other mortal contrivances, has to take some chances, and in the great majority of instances, no doubt justice will be done. Shorter time than one year has been upheld."

DISCUSSION OF APPELLANT'S BRIEF

The case of HARRIS v. DENNIE, 3 Pet. 292, cited in the appellant's brief (page 11), was a case where the United States had custody of certain imports and the Deputy Sheriff of Massachusetts County attached the goods. Clearly this case is dissimilar to the instant case where no effort had been made to interfere with the custody of the Federal Court.

Similarly, in the case of IN RE JOHNSON, 167 U. S. 120, referred to on page 12 of the appellant's brief, there was an attempt by a court through habeas corpus proceedings to interfere with the custody of a United States Court of a prisoner charged with rape.

TARBLE'S case, 13 Wall. 397 (page 12, appellant's brief), was an attempt by a State Court by writ of habeas corpus to procure the surrender of a person who had enlisted in the United States Army. This was clearly an interference with the sovereignty of the United States.

MCKAY v. KALYTON (204 U. S. 458, page 12, appellant's brief) was one in which the State attempted to exercise jurisdiction as to Indian lands allotted to an Indian. Under the law by which the land was allotted, the Federal Courts were given exclusive jurisdiction to determine controversies relating thereto. The State never had any authority as to the lands before they were allotted and there was no basis for the attempted jurisdiction.

The case of WABASH R. R. COMPANY v. ADELBERT COLLEGE, 208 U. S. 609, cited on page thirteen of the appellant's brief held that a State Court had no jurisdiction to order a sale of property held in the custody of a Federal Court and, therefore, could not declare a lien upon the property. The court indicated, however, that the lien was forbidden only because it was sought not for itself, but as part of the order of sale. It appears from a reading of the case that if the lien were not for the purposes of the order of sale, jurisdiction of the State Court in declaring the lien would have been proper.

In PALMER v. TEXAS, 212 U. S. 118, referred to by appellant on page twelve, the court, while agreeing with the general proposition, continued in the following language (page 126):

> "If it is established that the State Court had acquired jurisdiction over this property before the application in the federal court was made, the court of the state had the right to determine for itself, while continuing to lawfully exercise its prior jurisdiction, how far it would permit any other court to interfere with such process and jurisdiction."

In the instant case the appellant is attempting to interfere with the power of the Federal Court, which alone has the right to determine to what extent the decree of the State Court should be recognized. This question, however, cannot arise until the escheator of the Commonwealth of Pennsylvania makes application to the Federal Court in accordance with the decree of the State Court for an order of payment under the Act of Congress.

As said in WHITE v. MECHANICS SECURITIES CORPORATION, 269 U. S. 283, 301:

> "The U. S. seized the property in question from an enemy and of course could do with it what it liked. When it comes into court and seeks to appropriate

it there is a natural notion that it has elected to use its power. Its power could not be denied if the Attorney General were the complete mouthpiece of its will. But whatever his authority, it is subordinate to Congress; and Congress has more authentically delivered the sovereign intent by the statute to which we have referred.

"The statute gives an absolute right to the suitor who comes within its terms, unqualified by any reservation of a superior lien in case the U. S. should be a rival creditor. There is no reservation of priority in the Act, or of a right to intermeddle in the private suit of another, or of any advantage that it might have as captor of the fund. Whether from magnanimity or forgetfulness, it has assumed the position of a trustee for the benefit of claimants and has renounced the power to assert a claim except on the same footing and in the same way as others, if at all."

The Federal Court could easily decide this question for itself upon application by the escheator of the Commonwealth of Pennsylvania for an order of payment consistent with the decree entered by the Pennsylvania Court and under the relevant act of Congress.

The appellant points to the fact that the United States is a statutory trustee. There can be no question but that this trust is a dry trust, and that the United States as a trustee is a mere passive depositary of the property, with no active duties to perform. The position of the United States as such is seen in WHITE v. MECHANICS SECURITIES CORPORATION, *supra*, at page 301.

In COMMONWEALTH v. THOMAS' ADM'R, 140 Ky. 789, and IN RE MELROSE AVENUE, 234 N. Y. 48, it was decided that while proceedings in escheat are necessary to determine the title, the title is not given by the proceedings but occurs when the conditions exist upon which the title is based.

In IN RE MELROSE AVENUE, *supra*, Justice Cardozo said:

"The State is the ultimate owner and is in effect the ultimate heir. Ejectment or inquest of office 'does

not constitute an escheat.' It is the remedial expedient by which the fact of escheat is authenticated and where there is uncertainty or contest. The fact and not the record is the origin of title * * *. Later scholarship has thought it the better view 'that an inquest of office is only a proceeding to ascertain the title of the crown by escheat and not an essential condition to the vesting of title.'"

The appellant has asserted that the situs of the property depends upon the control over the property and has thereupon concluded that the control of the court is what determines the situs. The Pennsylvania Statute provides for the escheat of moneys in the control of the Federal Court sitting in Pennsylvania, and even if we adopt the appellant's interpretation of situs, the decree was properly entered. However, Justice Holmes has more clearly explained what we mean by the situs of a debt. In BLACKSTONE v. MILLER, 188 U. S. 189, he said:

> "What gives the debt validity? Nothing but the fact that the law of the place where the debtor is will make him pay. It does not matter that the law would not need to be invoked in the particular case * * *. So again, what enables any other person than the very creditor in proper person to collect the debt? The law of the same place.
>
> "Power over the person of the debtor confers jurisdiction."

Therefore, whether the jurisdiction of the State Court rests upon the indebtedness which gave rise to the deposit in the Federal Court or to the moneys themselves deposited in and still under the control of the Federal Court sitting in Pennsylvania, the property in question was within the jurisdiction of Pennsylvania and subject to escheat.

CONCLUSION

It is respectfully submitted that the judgment of the Supreme Court of Pennsylvania be affirmed, thereby giving the State of Pennsylvania the opportunity to make application to the Federal Court for an order of payment pursuant to the relevant Act of Congress.

ALBERT H. LADNER, JR.,
A. JERE CRESKOFF.

MICHAEL EDELMAN,
Of Counsel.

APPENDIX

OPINION SUR MOTION TO DISMISS PETITION

Argued August 7, 1934.

DICKINSON, *J.*, September 6, 1934.

Leave was given to file Supplemental Briefs. The cause is now ripe for a ruling.

The main objective of these proceedings is clear enough. The petitioner who styles himself "Escheator of the Commonwealth of Pennsylvania" seeks to recover moneys, part of which is in the Registry of this Court and part in the Treasury of the United States. His claim to it is that this money is property which has escheated to Pennsylvania. Some of the obstacles he must surmount before he can get the money are suggested by the caption given to the present proceedings. We have followed the form adopted by him.

The District Courts of the United States have many capacities in which they may sit. They may sit as Courts of Law; as Courts of Equity; as Courts in Admiralty; as Bankruptcy Courts, and in many capacities. We have designated these proceedings in Equity because the Petitioner has so designated them. We have given the subheading of a motion to dismiss because the present status of the proceedings were so referred to at the argument. We have not the record before us so do not know whether any such formal motion has been made. There is no real importance in this because if the prayers of the Petitions cannot be granted the Petitions are dismissed. We do not have access to the Petitions so assume that the prayers are that this Court enter judgments of escheat by analogy

to the action which would be taken by the State Courts in escheat proceedings.

We will treat this as the real question before us. Can this Court enter a judgment of escheat in favor of the Commonwealth of Pennsylvania? It is an anticipation but we may interpolate here the comment that this is a wholly different question from that of whether this Court would recognize the claims of Pennsylvania to these moneys under a title by escheat.

These moneys are in the hands of this Court or still, as to distribution, under its control. If any one turned up as a claimant owner, we could award the moneys to him. "Any one" would include Pennsylvania. Any claimant, however, would be required to show title before he could receive an award. This likewise includes Pennsylvania.

We have been favored with a very full discussion of the subject of escheat and the right of Pennsylvania to claim these moneys by escheat as a sovereign State. We would go much beyond what we are asked to do to support such claims of a sovereign. A sovereign is emnipotent, restrained only by the laws of nature and his relations with other sovereign powers. The latter restricts him to his own domain. Within them he is the ultimate owner of everything and may take whatever he chooses to take. He may make no compensation for what he takes. This power we know as the right of eminent domain. Its existence was the prompting for the common constitutional limitation "that private property shall not be taken for public use without just compensation." The very restriction upon the exercise of the absolute power to take implies its existence. This principle of ultimate ownership is the basis for what is known as the right of escheat. The right is absolute but the sovereign will not exercise it except in the absence of other owner claimants.

There can be no question of the possession by Pennsylvania of the so-called "right of escheat." The limitation

of which we have spoken exists because every sovereign is bound by the necessities of the case to restrict the exercise of his sovereign powers to his own domains. If he did not there would be trouble. He is assumed to so agree. Pennsylvania would not, for illustration, assert the power to escheat property in New Jersey. Why? Because New Jersey is also a sovereign power with the right to escheat property within its domain. In no other way can a clash be avoided. Precisely the same principle applies to the United States. It is likewise a sovereign.

Out of this situation a conflict of rival claims might arise, the discussion provoked by which would be very interesting. Into this as yet we see no reason to go. The question before us is a narrower one.

There is a distinction between "escheatable" and "escheated." The Pennsylvania Acts of Assembly recognize this and indeed use these very phrases. The title of Pennsylvania to any property subject to escheat is not because the property is "escheatable" but because it has been escheated. We can award moneys under the control and disposition of the Court only to those who establish title thereto. The Act of Congress which makes these moneys subject to the award of this Court does so only in favor of "any person or persons, corporation or company" who can lay successful claim of ownership thereto. Assuming arguendo the State to be within this Act it is able as yet to show no title to these moneys. Under the facts it may or may not be able to secure a judgment of escheat but it has not done so. Counsel for Petitioner recognize this and hence ask this Court to enter such a judgment. Have we the jurisdictional power to so do? The touchstone of the answer to this question is to ask another. Had the Petitioner gone into one of the several Courts of Common Pleas, the Orphans' Court or the Municipal Court of Philadelphia to ask it for such judgment or decree and the like question of power had raised, how would it be

answerable? The answer would be some cited Act of Assembly had conferred the power. Where does this Court get its power? The answer given us, and it is the only answer which could be given, is "from the same Acts of Assembly." This answer is not convincing for it encounters the principle that an Act of Assembly of the State can either confer jurisdictional powers upon this Court nor abridge those which we possess as Courts of the United States.

Some minor procedural difficulties have been suggested. Some of this money is or was subject to the jurisdiction of the Court of Equity; some of the Admiralty Court, and some of the Bankruptcy Court. We see no importance in these distinctions of jurisdiction and of powers. However, the different funds were raised when they had been paid into the Registry of the Court or had been turned into the Treasury of the United States, the Act of Congress empowers the District Court to decree, on the application of a claimant to whom the moneys belong. This means title. Evidence that money is "escheatable" is no evidence that it has been escheated, and the State has no title until there has been an escheat. The State Statutes make this clear. The real position of the Petitioner is that the State Statutes have conferred jurisdiction upon no State Court to enter judgment to escheat these moneys but they have conferred it upon this Court. This they cannot do, and we in consequence have no such power. Our powers are those conferred by Congress and Congress has restricted us to awarding the fund to the one who has title to it. Congress has passed no general escheat Statute. The State has no title and no title by escheat can be acquired otherwise than by a compliance with those Statutes. When the Petitioner is able to show title to these moneys it will then be our duty to pass judgment upon the title set up. Then, but not until then, will the very interesting questions discussed arise. If we are now asked to award these

moneys to the State under the authority of the cited Acts of Congress, we answer that it empowers us to make the award only to those who prove title, and the State has as yet no title. If we are asked to confer title by entering a judgment of escheat in favor of the State and thus give it title, our answer is that we have no jurisdictional power to so do.

The prayers of the Petitioner are denied and the Petitions dismissed.

SUPREME COURT OF THE UNITED STATES.

No. 439.—October Term, 1937.

The United States of America, Appellant, *vs.* Philip Klein, Escheator of the Commonwealth of Pennsylvania.	Appeal from the Supreme Court of the State of Pennsylvania.

[February 28, 1938.]

Mr. Justice Stone delivered the opinion of the Court.

The question for decision is whether statutes of the Commonwealth of Pennsylvania, Purdon's Penn. Statutes, Tit. 27, §§ 41, 45, 282, 334, are unconstitutional because they authorize interference with a federal court and an invasion of the sovereignty of the United States, in so far as they purport to confer jurisdiction on a state tribunal to declare the escheat of moneys deposited in the registry of the federal court and later covered into the Treasury of the United States.

In a suit brought by secured bondholders in the district court for eastern Pennsylvania to compel payment of the bonds by a defendant on the ground that it had appropriated the security to itself, a decree was entered in favor of the plaintiffs and other bondholders similarly situated, with provision for notice to the latter that they file their claims in the suit. *Brown* v. *Pennsylvania Canal Co.*, 229 Fed. 444; *Pennsylvania Canal Co.* v. *Brown*, 235 Fed. 669; *Brown* v. *Pennsylvania R. Co.*, 250 Fed. 513. It appearing that certain of the bondholders had not filed their claims and could not be found, the defendant was directed by the court to pay into its registry the money due to such bondholders, which was then placed in a designated despositary of the United States, in the name and to the credit of the court, pursuant to R. S. § 995, 28 U. S. C. § 851. On June 30, 1926, the fund was deposited in the Treasury of the United States as required by R. S. § 996, 28 U. S. C., § 852, in the case of funds paid into court and unclaimed for more than five years.

In 1934 the present appellee, as Escheator of the Commonwealth of Pennsylvania, proceeding under the Pennsylvania statutes which

authorize the escheat of moneys paid into court where the persons entitled to them have remained unknown for seven years, petitioned the district court to declare an escheat of the fund. The court dismissed the petition, without prejudice, on the grounds that appellee had not yet procured a declaration of escheat, which was deemed necessary in order to perfect the Commonwealth's title, and that the court was without jurisdiction to make such a declaration. Thereupon the Pennsylvania escheat statutes were amended, Act of June 28, 1935, P. L. 475, to confer upon the Court of Common Pleas jurisdiction to decree an escheat of moneys deposited in the custody or under the control of any court of the United States within the Commonwealth.[1]

The present suit was brought by appellee in the Court of Common Pleas, No. 5, of Philadelphia County, upon a petition setting out the facts already detailed and praying a declaration that the fund had escheated to the Commonwealth. The United States appeared in the suit and moved to dismiss the petition on the ground that the state court was without jurisdiction to escheat moneys in the custody of the United States or of its courts. The order of the Court of Common Pleas granting the motion was reversed by the Supreme Court of Pennsylvania, which held that the statutes relat-

---

[1] As amended, the statutes provide:

"Sec. 41. . . . Whenever an escheat has occurred, or shall occur, of any money or property deposited in the custody of, or under the control of, any court of the United States in and for any district within this Commonwealth, or in the custody of any depository, clerk or other officer of such court, the court of common pleas of the county in which such court of the United States sits, shall have jurisdiction to ascertain if an escheat has occurred, and to enter a judgment or decree of escheat in favor of the Commonwealth.

"Sec. 282. . . . . After the owner, beneficial owner, or person entitled to any of the following named moneys or property, shall be and remain unknown, or the whereabouts thereof shall have been unknown, for the period of seven successive years, such moneys or property shall be escheatable to the Commonwealth, and shall be escheated in the manner hereinafter provided, with interest actually accrued thereon to the date of the decree for the escheat of the same, namely: . . .

"(b) Any moneys, estate, or effects paid into or deposited in any court of this Commonwealth, or in any Federal court in and for any district within the Commonwealth, or in the custody of any officer of any such court.

"Sec. 334. That whensoever any money, estate or effects, shall have been, or shall hereafter be paid into or deposited in the custody or be under the control of any court of this Commonwealth, or of any court of the United States in and for any district within this Commonwealth, or shall be in the custody of any depository, registry, or of any receiver, clerk, or other officer of any of said courts, and the rightful owner or owners thereof shall have been or shall be unknown for the space of seven years, the same shall escheat to the Commonwealth, subject to all legal demands on the same."

ing to escheat of funds in the custody of federal courts, conferred jurisdiction on the court to declare the escheat and was subject to no constitutional infirmity since exercise of that jurisdiction involved no interference with the federal court and no attempted control over funds in its custody. 322 Pa. 481.

The United States then filed an answer and upon a trial of the issues the Court of Common Pleas gave its decree declaring that the fund had escheated to the Commonwealth and that appellee had authority to claim it, and directing him to apply to the district court for an order that the moneys be paid to him as Escheator. The State Supreme Court affirmed so much of the decree as declared the escheat and authorized appellee to prosecute the claim of the Commonwealth to the moneys. 326 Pa. 260. From its decree of affirmance the case comes here on appeal under § 237 of the Judicial Code.

Section 996 of the Revised Statutes directs that when the right to moneys paid into federal courts has been adjudicated and they are unclaimed for more than five years, they shall be deposited in the Treasury of the United States, in the name of the United States. It further provides: "Any person or persons or any corporation or company entitled to any such money may, on petition to the court from which the money was received . . . and upon notice to the United States attorney and full proof of right thereto, obtain an order of court directing the payment of such money to the claimant, and the money deposited as aforesaid shall constitute and be a permanent appropriation for payments in obedience to such orders."[2]

The Government does not, in pleading or argument, set up any right, title or interest in the present fund adverse to the unknown bondholders. It does not contend that the fund has been or can be escheated to the United States. It agrees with the contention of

[2] The Permanent Appropriation Repeal Act, June 26, 1934, c. 756, 48 Stat. 1224, 1230, § 17, declares that appropriation accounts appearing on the books of the government, including "Unclaimed moneys of individuals whose whereabouts are unknown (Justice)", "are abolished and any unobligated balances under such accounts as of June 30, 1935, shall be covered into a trust fund receipt account in the Treasury to be designated 'Unclaimed Moneys of Individuals Whose Whereabouts Are Unknown.' . . . There are authorized to be appropriated, annually, from such account such sums as may be necessary to meet any expenditures of the character now chargeable to the appropriation accounts abolished by this section. . . ."

appellee, which we accept as correctly interpreting the applicable federal statutes, that the fund remains subject to the order of the district court to be paid to the persons lawfully entitled to it upon proof of their ownership. But it insists here, as in the state courts, that the decree declaring the escheat is an unconstitutional interference with a court of the United States, an invasion of its sovereignty, and is an attempt, void under the Fourteenth Amendment, to exercise jurisdiction over the absent bondholders and the moneys, neither of which are shown to be within the state.

While a federal court which has taken possession of property in the exercise of the judicial power conferred upon it by the Constitution and laws of the United States is said to acquire exclusive jurisdiction, the jurisdiction is exclusive only in so far as restriction of the power of other courts is necessary for the federal court's appropriate control and disposition of the property. *Penn General Casualty Co.* v. *Pennsylvania,* 294 U. S. 189; see *Leadville Coal Co.* v. *McCreery,* 141 U. S. 475, 477. Other courts having jurisdiction to adjudicate rights in the property do not, because the property is possessed by a federal court, lose power to render any judgment not in conflict with that court's authority to decide questions within its jurisdiction and to make effective such decisions by its control of the property. *Penn General Casualty Co.* v. *Pennsylvania, supra;* see *Heidritter* v. *Elizabeth Oilcloth Co.,* 112 U. S. 294, 304; cf. *Buck* v. *Colbath,* 3 Wall. 334, 342; *Riehle* v. *Margolies,* 279 U. S. 218. Similarly a federal court may make a like adjudication with respect to property in the possession of a state court. *Yonley* v. *Lavender,* 21 Wall. 276; *Byars* v. *McAuley,* 149 U. S. 608, 620; *Security Trust Co.* v. *Black River National Bank,* 187 U. S. 211, 227; *Waterman* v. *Canal-Louisiana Bank & Trust Co.,* 215 U. S. 33, 43-46; *Commonwealth Trust Company* v. *Bradford,* 297 U. S. 613, 619; *General Baking Co.* v. *Harr,* 300 U. S. 433.

In this case jurisdiction was acquired by the district court, by reason of diversity of citizenship, to adjudicate the rights of the parties. That function performed, it now retains jurisdiction for the sole purpose of making disposition of the fund under its control, by ordering payment of it to the persons entitled as directed by the federal statute. Beyond whatever is needful and appropriate to the accomplishment of that end, the jurisdiction and possession of

he federal district court does not operate to curtail the power hich the state may constitutionally exercise over persons and roperty within its territory.

The present decree for escheat of the fund is not founded on ossession and does not disturb or purport to affect the Treasry's possession of the fund or the district court's authority ver it. Nor could it do so. *Penn General Casualty Co.* v. *Pennylvania, supra; United States* v. *Bank of New York & Trust Co.*, 96 U. S. 463, 478. At most the decree of the state court purports o be an adjudication upon the title of the unknown claimants in he fund by a proceeding in the nature of an inquest of office as n the case of escheated lands, compare *Security Savings Bank* v. *alifornia*, 263 U. S. 282, 287, with *Hamilton* v. *Brown*, 161 U. S. 56, 263, and to confirm the authority of appellee to make claim to he moneys. It is subordinate to every right asserted and decreed n the federal suit and effective only so far as it establishes rights erived from them. Neither the nature of the suit in the district ourt nor the federal statutes preclude transfer of or change in the nterest of the unknown claimants, either by judicial proceedings in he state court or otherwise, pending final disposition of the fund by he federal court. Section 996 of the Revised Statutes contemplates hat changes in ownership of the fund may occur, since it provides hat after the right to the fund has been finally adjudicated and it as been covered into the Treasury it shall be paid over to any peron entitled, upon full proof of his right to receive it.

Since the Government has not set up and does not assert any laim or interest in the fund apart from the possession acquired nder the decree of the district court and the statutes of the United tates, it is unnecessary to consider now the effect on the decree of he state court of the fund's absence from the state, and the absence r nonresidence of the unknown claimants, if such is the case. ll such questions will be open and may be raised and decided henever application is made to the district court for payment ver of the fund.

Affirmed.

Mr. Justice CARDOZO and Mr. Justice REED took no part in the nsideration or decision of this case.

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 274

SAINT PAUL MERCURY INDEMNITY COMPANY,
PETITIONER,

vs.

RED CAB COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 31, 1937.

CERTIORARI GRANTED OCTOBER 18, 1937.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1936.

No. _____

SAINT PAUL MERCURY INDEMNITY COMPANY,
Petitioner,

vs.

RED CAB COMPANY,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

RECORD

INDEX.

Index to Printed Record of proceedings in U. S. District Court i
Certificate of Clerk to Printed Record 39
Index to Record of proceedings in U. S. Circuit Court of Appeals:
Placita 41
Appearance for appellant, filed Sept. 24, 1936 41
Appearance for appellee, filed Oct. 19, 1936 42
Hearing and submission, Feb. 24, 1937 43
Opinion by Evans, C. J., filed Apr. 12, 1937 44
Judgment, entered Apr. 12, 1937 47
Reference to filing of petition for rehearing on Apr. 24, 1937 47
Notice and petition for certiorari for diminution of record 48-49
Order of Apr. 27, 1937, granting petition for writ of certiorari for diminution of record 54
Reference to issuance of Writ of Certiorari on Apr. 27, 1937 55
Writ of Certiorari 55
Return to Writ of Certiorari 56
Transcript of proceedings on removal from Superior Court of Marion County, Indiana to U. S. District Court 56
Complaint 57
Exhibit A—Binder 61
Summons 62
Appearance 62
Return of summons 63
Petition for removal 64
Bond for removal 69

Notice of petition and bond for removal..... 71
Removal order 72
Praecipe for record 73
Certificate of Clerk 74
Order of June 18, 1937, denying petition for rehearing 75
Motion for stay of mandate, filed June 26, 1937..... 75
Order of June 26, 1937, staying mandate..... 76
Certificate of Clerk 77

Order allowing certiorari..... 77